Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20556

In the Matter of	)	
	)	RM-10715
Disclosure of Customer Information	)	
in 9-1-1 Emergencies	)	

Ex parte communication pursuant to Section 1.1206 of the Rules

ADDITIONAL COMMENTS
OF NENA, APCO AND NASNA

The National Emergency Number Association ("NENA"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Association of State Nine One One Administrators ("NASNA") hereby submit this additional response to the Reply Comments of AT&T Wireless, T-Mobile USA and Verizon Wireless that were not available to us at the time of our own Reply Comments.[1]

Purpose of the Petition. Verizon quotes correctly our Petition's aim to examine the "legal preconditions to release of customer-specific information to [PSAPs] in the course of response to 9-1-1 emergency calls." Regrettably, however, each of the responding carriers proceeds with its own version of our real objectives.

AT&T asserts that we have pre-conceived a ruling that "carriers can and must release location information to public safety entities even if the [CPNI] requested is associated with a customer who was not the caller to 911, and even if the emergency involves only a danger to

[1] Dated September 15, 2003. None of these three wireless carriers filed comments on August 15, 2003.

property rather than a threat to life or serious injury." (Reply Comments, 1) That's not the relief we seek.

Verizon reads into our Petition a "position supported by public safety" and therefore urges denial unless the Department of Justice is consulted. There is no such "position" in our request, and we have already indicated our support for solicitation of the views of the Department.[2]

T-Mobile says "Petitioners argue that the law should be changed to permit broader disclosure." (Reply Comments, 1) That is not a fair characterization of the list of "clarifying questions" we posed at pages 7-8 of our Petition.

We carefully discussed what seem to be inconsistencies or ambiguities in the several civil and criminal statutes. Not surprisingly, we betrayed a predisposition toward release of information in true emergencies. But predisposition is not prejudgment. In the end, we recognized that Congress might need to be asked to change the laws if they could not be reconciled. The record in the requested rulemaking would become the best evidence of need for legislation.

The disparate views of the carriers themselves are good reason to open a proceeding. These are discussed below. Another good reason has emerged since the filing of the Petition in May. Not all providers of wireless service have live-staffed points of contact for PSAP emergency use 24 hours a day. This is the first requirement for securing customer-specific information that might aid in response. Any rulemaking on the topic should include discussion of how to assure PSAPs reliable points of carrier contact.

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[2] Reply Comments of NENA, APCO and NASNA, September 15, 2003, 1-2. ("We propose that this occur within the frame of a formally constituted rulemaking.")

AT&T. This wireless carrier states (Reply Comments, 6) that "Section 222(d)(4) [of the Communications Act] allows carriers to comply with the Commission's E911 rules when their customers call 911 *regardless of the nature of the emergency*," yet its "911 Exigent Circumstances Form" implies that a PSAP request, absent warrant or court order, will only be entertained in circumstances of "immediate danger of death or serious physical injury." (our Petition, Attachment 2) This is what caused us to ask (Petition, 8) whether the Department's "implied consent" interpretation of 18 U.S.C.§2703(c) overcomes the "immediate danger" limitations of Sections 2702(b) and (c) of the same criminal code title.

AT&T takes no note of the discrepancy. It simply states that Sections 2702(b) and (c) cover circumstances where the customer has not consented to release of identifying information (Reply Comments, 6) without discussing implied consent under Section 2703(c). For PSAPs seeking desperately to send aid in an emergency, this is the essence of confusion-breeding inconsistency: One section of the law, 2703(c), where implied consent is not limited by degree of danger versus another, Section 2702(b)-(c), where consent may not be presumed short of death or serious injury.

T-Mobile. This carrier states that "when T-Mobile has a reasonable belief that an emergency exists where there is immediate danger of death or serious physical injury to any person, whether or not that person is a T-Mobile subscriber, T-Mobile may disclose any subscriber information in its possession to emergency personnel . . ." (Reply Comments, 3). Disclosure is more restricted, says T- Mobile, for fires, burglaries or other potentials for property loss.

As indicated in our Petition (5, and Attachment 3), T-Mobile did not draw such distinctions as of August, 2002, when it last revised the security procedures we cited. The

disparity between what is written in the T-Mobile document titled "Law Enforcement Relations" and what the carrier now asserts is a good example of why a rulemaking is needed. As we stated in our opening comments (at 1):

> We have found that wire and wireless carriers interpret and apply the laws variously in responding to emergency call-taker or responder requests for customer proprietary network information ("CPNI") during the course of emergencies.

Armed with 20-20 hindsight, T-Mobile gratuitously denigrates (6, note 19) the conduct of Guilford County, NC calltakers, responders and law enforcement personnel in the circumstances described at Attachment A of our Comments of August 15, 2003. The carrier should know better than to characterize as a "lark" and a "subterfuge" the search for the source of deadly threats in that case. Had those threats against the caller's family and against airline passengers materialized, we feel certain the persons at risk would not have wished Guilford County officials to abandon their inquiry or route it through the courthouse.

We do not doubt that some PSAPs have a "lack of appreciation for the legal framework that must guide carriers," *Id.,* but public safety has no monopoly on the ignorance or confusion surrounding the subject. Clearly carriers, as well, need to be better educated.

Verizon. Chiefly concerned that the FCC is being asked to stand in the shoes of the Department in matters of criminal law, Verizon does not discuss at all the pertinent subsections of Section 222 of the Communications Act. Equally strangely, the Reply Comments discuss the recent additions to the Criminal Code but say nothing at all about how to reconcile these with the older "consent" provisions of 18 U.S.C.§2703(c), which the Department reads to include the "implied consent" of calling 9-1-1. As noted earlier, we join Verizon in welcoming updated Department views and suggest that they be placed on the record of the requested rulemaking.

We find it surprising that Verizon, T-Mobile and AT&T (and CTIA and Sprint before them) should be so adamant about strict reading of the letter of the criminal statutes when the most recent interpretation involving 9-1-1 -- the 1996 opinion from the Office of Legal Counsel through the Criminal Division to the FCC (our Petition, 1, n.3) -- is founded on an implication, not an expression, in statutory language at 18 U.S.C.§2703(c).

Always-available Points of Contact. Since filing this Petition in May, we have come to a better appreciation of how important it is for carriers or resellers whose customers use 9-1-1 to have centers where PSAPs can call for help in the event of emergency. According to the testimony of line 9-1-1 managers on this record, the centers should be staffed (not automated) 24 hours a day, 7 days a week.

A useful additional purpose of the requested rulemaking would be to invite comment on the extent to which states require this kind of access for wire telephone companies or resellers, and whether the FCC or the states ought to impose similar requirements on wireless carriers and resellers.[3]

Conclusion. The protests of the wireless carriers and their trade association notwithstanding, NENA, APCO and NASNA are not seeking to extend the criminal law by stealth nor to usurp the proper role of the Department of Justice. Instead, we are proceeding openly to seek clarification of seeming inconsistencies in the law, and disparities between the

[3] It may be that fewer broken-off wire 9-1-1 calls, or greater ease of establishing reconnection, has meant less need for emergency delivery of customer information. Thus, wire practice in this regard would not necessarily dictate what ought to be asked of wireless carriers.

law and the practice of both carriers and PSAPs. A good way to fulfill this objective is by a rulemaking in which the Department is invited to participate. We urge that our Petition be granted.

Respectfully submitted,

NENA, APCO and NASNA

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